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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 361 of 1988.

Bhuvneshwar .... Applicant.

Versus

Union of India & others .... Respondents.

Hon'ble Ajay Johri, A.M.  
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. A. Johri, A.M.)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant in this case is working as a temporary Waterman under the Station Superintendent (SS), Aligarh on the Northern Railway. He is aggrieved by his non-regularisation in service as a Volunteer Mobile Booking Clerk (VMBC) in accordance with the policy decision contained in Railway Board's letter of 21.4.1982 and 20.4.1985.

2. The applicant's case is that he was recruited as a VMBC on 16.6.1982 and was posted at Aligarh on daily wage basis on a payment of Rs.9/- per day which was enhanced to Rs.14/- per day. He continued to work in that capacity upto 31.7.1984. Thereafter he was engaged on that job in the year 1985. He was, however, engaged as a temporary Waterman in 1985 and is continuing to be engaged in that capacity upto the year 1987 during the summer months from 15th April to 15th August every year and his services have not been regularised. The applicant's father was in service as a Porter in the year 1982 at the time when he was recruited as a VMBC. His father, however, died in December, 1982. According to him, since he was engaged as a VMBC at a time when his father was alive, <sup>3</sup> the respondents could not discriminate against him in the following years after the death of his father. He has alleged that he worked for an aggregate period of 195 days as a VMBC and thus he acquired a temporary status under the prescribed service

rules. He has further alleged that similarly recruited VMBCs, who were recruited in the year 1977, 1978 and 1979 have been regularised after due screening in terms of the policy decided by the Railway Board by their letter of 21.4.1982 and the subsequent letter of 20.4.1985. According to him, even after his disengagement as a VMBC he has been engaged as a Waterman and has been working continuously in that capacity. He has thus completed nearly six years of service. Therefore, he is entitled for regularisation in terms of the Hon'ble Supreme Court's judgment in Inderpal Yadav's case reported in 1985 (2) SLR 248. The applicant represented to the Chief Commercial Superintendent (CCS), Northern Railway, but no action was taken on his representation. He has, therefore, sought relief that he should be treated to have acquired temporary status and should be conferred all the benefits and privileges of a temporary employee and his services may be regularised as a VMBC.

3. The respondents in their reply have admitted that the applicant has worked for a total period of 195 days as a VMBC <sup>3/ upto 1987</sup> and for a total period of 295 days, mostly as Hot Weather Staff thereafter. They have further said that since the applicant has not rendered continuous period of service for the requisite period, he is, therefore, not entitled to be absorbed in regular service. The periods during which he worked as a VMBC, as indicated by the respondents in their reply was 69 days during 1982, 33 days during 1983, and 90 days during 1984.

4. In his rejoinder affidavit the applicant has stated that since he has worked for a period exceeding 120 days as a VMBC during 1982-84 in terms of Railway Board's letter No. 220-E/190-XI(E-4) of 16.4.1981, he has attained temporary status and, therefore, he deserves to be considered for absorption in that capacity and even as a Waterman he has worked during the Hot Weather, <sup>3/ only</sup>. His total period upto 1988 aggregates to 400 days and here also he deserves to be regularised. In this connection he has referred to the pronouncement of the Hon'ble Supreme Court in Dailyrated

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Casual Labour v. Union of India & others (AIR 1987 S.C. 2342) and Ram Kumar & others v. Union of India & others (AIR 1988 S.C. 390) whereby the Hon'ble Supreme Court has laid down necessary dicta in respect of absorption of casual labours who have worked continuously for more than one year.

5. We have heard the learned counsel for the parties. The main emphasis laid by the learned counsel for the applicant in his arguments was that the applicant has attained temporary status and in terms of the scheme laid down by the Railways consequent to the Hon'ble Supreme Court's orders in Inderpal Yadav's case as well as the other two relied on cases the applicant should be regularised in service. On behalf of the respondents it was submitted that if the applicant will be covered by the scheme as laid down for absorption of casual labour in the context of the decision of the Hon'ble Supreme Court in Inderpal Yadav's case, he will be ~~considered~~ <sup>3</sup> ~~covered~~ for regularisation under the scheme. Nothing else was pressed before us. We have also perused the paper book and the replies filed by the parties.

6. There is no dispute about the fact that the applicant had worked as a VMBC for a total period of 195 days spread over the three years, i.e. 1982, 1983 and 1984 and that he had not worked continuously on this job. The Railway Board in their letter of 21.4.82 copy of which is annexed as Annexure 'A-4' to the application, had considered the question of regularisation of VMBC through screening by departmental committee for absorption in the Railways. According to this letter the Board had decided that ~~those~~ <sup>3</sup> VMBCs who had been engaged on various Railways on certain rates of honorarium per hour or per day may be considered for absorption against regular vacancies provided they had the minimum qualifications required for direct recruits and had put in a minimum of three years' of service as VMBCs. There is no dispute about the fact that the applicant had only worked for 195 days which were spread over to three years. This can by no stretch of imagination

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mean that he had worked for three years and, therefore, the prayer of the applicant that he should be considered for regularisation as a VMBC in terms of Railway Board's letter of 21.4.1982 is not ~~we~~ tenable.

7. <sup>3/</sup> In the second spell after 1984, i.e. after the period during which he worked as VMBC the applicant had been engaged as a Hot Weather Staff and according to his own showing he has indicated that he had worked during the summers from 15th April to 15th August every year since 1985. The Railway Board's instructions on the subject of casual labour ~~was~~ <sup>3/</sup> conveyed in their letter of 2.4.81 lay down that the gap between two spans may be condoned if the gap is due to discontinuance of a casual labour on completion of work or for nonavailability of further productive work. In terms of this letter the previous spell is not to be counted only in case where the job is available and the retrenched casual labour on having <sup>3/</sup> been summoned does not resume ~~duty~~ <sup>3/</sup> duty. These gaps are not subject to any time limit. This letter also lays down that the service in one Unit is not taken into account if the incumbent joins another seniority unit after the completion of work in the former unit. The applicant has been working only at Aligarh in the Hot Weather Establishment. Therefore, if he has been working in the same unit <sup>3/</sup> ~~out~~ through <sup>3/</sup> the period the gaps between two summer establishments should get automatically condoned and his services, which now aggregates to nearly 400 days should give him the temporary status. In their reply the respondents have said that the petitioner did not render continuous period of service, therefore, he is not entitled to be absorbed in regular service. We are not able to appreciate this averments. The point that has to be examined by the respondents <sup>3/</sup> ~~and~~ <sup>3/</sup> is whether <sup>3/</sup> ~~in terms of~~ the period during which the applicant has worked qualifies for temporary status or not and whether in terms of the total number of days worked he would become eligible for screening according to his seniority in this regard for regularisation.

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It is not disputed by the parties that there is a scheme available on the Railways for regularisation of the casual labour who have put in certain period of service in terms of the Hon'ble Supreme Court's decision in Inderpal Yadav's case. It is also not under dispute that the Railways have introduced this scheme and they are taking action to regularise the casual labours in terms of that scheme. Therefore, if the applicant qualifies in terms of this scheme, he will need to be considered for regularisation, according to his ~~turn~~ <sup>3/</sup>turn.

8. In Ram Kumar & others v. Union of India & others (AIR 1988 S.C. 390) the petitioners were workmen engaged on casual labour terms for periods varying between 10 and 16 years in the Construction Department of the Signal Unit of the Northern Railways and they had alleged that each of them had ~~to~~ been continuous service for quite a long period but they were not treated as temporary servants and were also given discriminatory rates of wages. They were seeking direction to have them treated at par with maintenance works and for a declaration that they were entitled to equal pay for equal work and for absorption in regular cadre as per circulars issued by the respondents. The Hon'ble Supreme Court had directed that the petitioner should be entitled to the same pay as is admissible to others either in the project or in the <sup>3/</sup>line open ~~hand~~ and they will also consider the claims of each of the petitioners promptly and make appropriate orders for their regularisation.

9. In Inderpal Yadav's case the Hon'ble Supreme Court had also considered the disputes arising out of termination of employment and, inter alia, seniority of the casual labour and had changed the exceeding prevalent practice for reckoning seniority and directed that seniority of project casual labour may be combined and prepared departmentwise and categorywise and in terms of the directions given by the Hon'bl Supreme Court steps were taken by the Railways

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10. In view of the fact that the Hon'ble Supreme Court's orders in Inderpal Yadav's case have already resulted in the promulgation of the scheme for absorption of the casual labour. We have no doubt that the applicant's case will also be considered for regularisation in terms of that scheme in accordance with his seniority and eligibility.

11. In view of the above, we do not think that the applicant has been able to make out any case for issue of any directions to the respondents for regularisation of his service as a VMBC. He will, however, be entitled for being considered to have attained temporary status in terms of the Board's directions on the subject. In conclusion, therefore, we allow this application in part and direct that the respondents will consider the applicant for being given temporary status on his having worked as a Hot Weather workman for nearly 400 days now.

12. The application is disposed of accordingly in view of the observations made in para 11 (supra) with no order as to costs.

*S. S. Arora*

MEMBER (J).

*S. S. Arora*

MEMBER (A).

Dated: February 25<sup>th</sup>, 1989.

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